

BOARD OF APPEALS CASE NO. 5181

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BEFORE THE

APPLICANTS: Kenneth & Denise Sliker

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ZONING HEARING EXAMINER

REQUEST: Variance to construct a detached garage within the required setbacks in the Rural Residential District; 1319 Wiley Oak Drive, Jarrettsville

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OF HARFORD COUNTY

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Hearing Advertised

HEARING DATE: November 1, 2001

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Aegis: 9/26/01 & 10/3/01

Record: 9/28/01 & 10/5/01

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Kenneth W. Sliker, and Denise L. Sliker, are requesting a variance, pursuant to Section 267-26C(4) of the Harford County Code, to allow a detached garage to be located in the front yard, pursuant to Section 267-35C, Table III, of the Harford County Code, within the 25 foot front yard setback and the 40 foot minimum building setback shown on the recorded subdivision plat in an RR Conservation District.

The subject parcel is located at 1319 Wiley Oak Drive, Jarrettsville, Maryland 21084, in the Fourth Election District, and is more particularly identified on Tax Map 32, Grid 3B, Parcel 500, in the subdivision of Centennial Oaks. The parcel contains approximately 1.01 acres.

The Applicant, Kenneth W. Sliker, appeared and testified that he and the Co-Applicant, Denise L. Sliker, are the owners of the subject property. He is familiar with the Department of Planning and Zoning's Staff Report, and has no changes or corrections to that Report. He also stated that he has no objection to any of the conditions of approval recommended in the report. Mr. Sliker described his property as an unusually shaped corner lot, currently improved by a two-story dwelling, approximately 3,400 square feet in size. The existing home has an attached two-car garage, but the garage is incorporated into a finished basement occupied by the Co-Applicant's parents. There is a blacktop drive to the right of the dwelling with access onto Wiley Oak Drive.

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The witness stated that he proposes to build a 28 foot by 28 foot (784 square foot) detached garage with an 8 by 12-pitched roof. The materials used to construct the proposed garage will match those used in the construction of the existing dwelling. The garage will be used for storage of personal property and lawn equipment. The side of the proposed garage will encroach into the front yard setback, and will come as close as 10 feet from the property line along Wiley Oak Drive. Mr. Sliker testified that due to the unusual configuration of the property, and the placement of the existing home, drive, and septic system, there is no other feasible location on the subject property to build a detached garage. The witness then introduced a letter of approval from the Centennial Oaks Community Association, stating that it has no objection to the construction of the proposed garage.

Finally, Mr. Sliker testified that he does not believe that the requested variance would have any adverse impact on adjoining properties, because the design of the proposed garage is compatible with both the existing home, and with and other properties in the neighborhood.

Mr. Rowan Glidden, a duly qualified registered landscape planner from the firm of Campbell & Nolan Associates, Inc., appeared and testified that he had reviewed the application, staff report, zoning code and tax maps, and had personally visited the subject property. The witness stated that the Department of Planning and Zoning Staff Report accurately describes the subject property. The property fronts on Becky Court, but will have access to the proposed garage from Wiley Oak Drive. The property backs to an overhead transmission line, and the existing septic system is located to the rear of the dwelling.

Mr. Rowan stated that in his opinion the subject property is unique. It is a corner lot located at the intersection of Wiley Oak Drive and Becky Court. Becky Court is very short, and this creates an unusual configuration for the front property line. The witness stated that the property is also unique because the subdivision plat was recorded with an extra setback line. The developer requested that the front setback be increased to 40 feet, instead of the 25 feet required by the Code.

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According to Mr. Rowan, the proposed location is the only practical place on the property to locate a detached garage. Building a smaller garage would create practical difficulty for the Applicants, because it would not meet their storage needs.

Finally, the witness testified that the granting of the requested variance will not create any detriment to adjoining property owners because the Applicants can meet all of the conditions suggested by the Department of Planning and Zoning. In addition, the proposed detached garage will not create any sight distance problems, because of its placement on Wiley Oak Drive, to the rear of the existing dwelling.

The Department of Planning and Zoning recommended approval of the subject request in its Staff Report dated July 30, 2001, stating that:

“The Department finds that the subject property is unique. The property is an unusually shaped corner lot, subject to two front yard setbacks. The garage should not have an adverse impact on traffic or sight distance along Wiley Oak Drive. The proposed location appears to be the only practical area for the garage due to the location of the septic reserve area.”

No witnesses appeared in opposition to the requested variance.

CONCLUSION:

The Applicants, Kenneth W. Sliker, and Denise L. Sliker, are requesting a variance pursuant to Section 267-26C(4) of the Harford County Code to allow a 28 foot by 28 foot detached garage to be located in the front yard pursuant to Section 267-35C, Table III of the Harford County Code within the 25 foot front yard setback, and the 40 foot minimum building setback shown on the recorded subdivision plat in a RR Conservation District (10 feet proposed).

Section 267-26C(4) of the Harford County Code provides:

“No accessory use of structure shall be established within the required front yard, except agriculture, signs, fences, walls, or parking area and projections or garages as specified in Section 267-23C, Exceptions and modifications to minimum yard requirements.”

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Section 267-23C of the Harford County Code provides for limited exceptions and modifications to minimum yard requirements, however there is no provision in that Code Section which allows for a detached garage to be constructed within the minimum front yard setback. Section 267-35C, Table III, of the Harford County Code Design Requirements for Specific Uses in a Rural Residential District, provides for a minimum 25 foot front yard depth. This requirement was increased to a 40 foot minimum building setback by the developer when the subdivision plat was recorded.

The Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique only if there is a finding that a peculiar characteristic or unusual circumstance, relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, *supra*, at 721. If the subject property is found to be unique, the hearing examiner may proceed to the second prong of the test. The second prong involves a determination as to whether literal enforcement of the zoning ordinance, with regard to the unique property, would result in practical difficulty or unreasonable hardship to the property owner.

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The Hearing Examiner finds that the subject property is unique. The property is a corner lot and hence subject to two front yard setbacks. In addition, the developer recorded the subdivision plat with a setback, greater than that required by the Harford County Code. Development in the rear yard is limited by the existing septic system and septic reserve. There was no opposition testimony introduced to contradict any of these findings. Thus, the first prong of the Cromwell test has been met.

Having found that the subject property is unique, it must next be determined whether denial of the requested variance would create an unreasonable hardship or practical difficulty for the Applicants. The Hearing Examiner finds that literal enforcement of the Code would result in practical difficulty in this case because the unusual configuration of the subject property, the locations of the existing dwelling drive and septic system, and the size of the garage required by the Applicants, make the proposed location the only practical place on the subject property where a detached garage can be constructed. If the variance is not granted, the Applicants will be denied property rights commonly enjoyed by others within the Centennial Oaks Subdivision, and Harford County generally.

Finally, the Hearing Examiner finds that the granting of the requested variance will not have any adverse impact on adjacent properties, or materially impair the purpose of this Code or the public interest. The proposed garage will be constructed of materials which match those used in the existing two story dwelling. In addition, the proposed construction will not cause any sight distance problems on Wiley Oak Drive.

The Hearing Examiner recommends approval of the Applicant's request subject to the following conditions:

1. That the Applicant obtain all necessary permits and inspections for the proposed construction.
2. That the garage shall be designed to be compatible with the existing dwelling, and similar materials shall be used in its construction.
3. That the proposed garage shall be used only for Applicant's personal use, and shall not be used for business purposes or for living area.

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4. That the Applicant not encroach further into the required setback than the distance requested herein.

Date NOVEMBER 30, 2001

**Rebecca A. Bryant
Zoning Hearing Examiner**